IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.76 OF 2005

Mahanagar Telephone Nigam Ltd. ...Petitioner.

vs.

M/s.Dolchand Kallaji. ...Respondents.

Ms.S.I.Shah i/b. M/s.S.I.Shah & Co., for Petitioner.
Ms.Nitya Mehta i/b. B.N.Dalal, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 7th March, 2005.

P.C.:-

1. The petitioner has filed this petition under Section 14 of the Arbitration and Conciliation Act,1996, for terminating the mandate of the Arbitrator. The arbitration application no.194 of 2002 was filed in this

Court by the Respondents. On that application, after hearing the petitioner-MTNL, the order dated 10th January,2003 was passed and the Director General, Department of Telecommunications who was named as an Arbitrator under clause 25 of the Contract between the parties, was appointed as an Arbitrator. According to the petitioner, the petitioner received a letter dated 19th September,2003 from the Department of Telecommunications, New Delhi, wherein it was stated that "The matter has been examined in consultation with Legal Adviser of DoT. As it would not be possible for DG. DoT to act as Arbitrator himself, therefore, MTNL (Mumbai) may seek the modification of Court Order so that DG, DoT could appoint an arbitrator in respect of the case of M/s.Dholchand Kallaji Vs. MTNL and others." According to the learned counsel for the petitioner, it is pursuant to this letter that the present petition has been filed. Sub Section (1) of Section 14 of the Arbitration and Conciliation Act, 1996, under which this petition has been filed reads as under:-

" 14. Failure or impossibility to act

(1) The mandate of an arbitrator shall terminate if-

(a) he become de jure or de facto

unable to perform his functions or for other reasons fails to act without undue delay;

(b) he withdraws from his office or the parties agree to the termination of his mandate."

It is clear from the perusal of above section that the mandate of the Arbitrator can be terminated in case he de-jure or de-facto unable to perform his functions or for other reasons fails to act without undue delay. Perusal of the averments in the petition shows that the petitioner is seeking termination of the mandate of the Arbitrator appointed because he is unable to act as an Arbitrator, and this statement is based on the letter dated 19th September,2003, wherein it is stated that it is not possible for the Director General to act as an Arbitrator. No reasons, as to why it is not possible, are disclosed in the letter. The Arbitration clause contained in clause (i) of clause 25 which is relevant, reads as under:

"Clause 25: ARBITRATION CLAUSE.

(i) In the event of any question, dispute or difference arising under this agreement or in connection there with except as to matter the

> decision of which is specifically provided under this agreement, the same shall be referred to sole arbitration of the Director General, Department of Telecommunications or in case his designation is changed or his office is abolished, then in such case to the sole arbitration of the officer for the time being entrusted whether in addition to the functions of the Director General, Department of Telecommunications or by whatever designation such officers may be called (hereinafter referred to as the said officer) and <u>if the Director General or the said officer is unable or unwilling to act as such the sole arbitration or some other person appointed by the Director General or the said officer</u>."

Perusal of this clause shows that the Director General can appoint some other person as an Arbitrator if the Director General is unable to or unwilling to act as an Arbitrator. Perusal of the order dated 10th January,2003 shows that the Director General was appointed as an Arbitrator after considering the arbitration clause. In my opinion, in order to terminate the mandate of the Arbitrator appointed, on the basis of his inability to

act, in the petition seeking termination of the mandate the reasons for his inability to function as an Arbitrator will have to be disclosed. The petition does not disclose any reasons. When I pointed out this to the learned counsel appearing for the petitioner, she stated that the petition has been filed because the letter dated 19th September,2003 was received.

2. In my opinion, the MTNL was not at all justified in rushing to the Court merely because the letter dated 19th September,2003 was received. If they were not knowing the reason of inability of the Director General to function as an Arbitrator, they should have sought details from the office of the Director General. On the basis of the materials available, the MTNL was not at all justified in instituting this petition. Instead of approaching the Court, the petitioner should have collected appropriate material for seeking the orders from the court.

The Petition is rejected.

7.3.2005 ----